THE HONOUABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.3654 of 1995

Between:

Plantation Cell Division. **.. PETITIONER**

AND

The Authority under Payment of Wages Act

and another.

.. RESPONDENTS

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ORDER:

Plantation Cell Division of the Hyderabad Metropolitan Water Supply and Sewerage Board is before this court seeking to have the order of the Payment of Wages authority, in P.W. Case No.4 of 1992, dated 23-09-1994, quashed.

Facts, to the extent necessary, are that the 2nd respondent filed an application under the Payment of Wages Act, 1936, claiming wages for the period from 01-04-1991 to 29-02-1992. According to the 2nd respondent, he had put in 4 years 4

months service and without notice of retrenchment or removal he was denied wages from 01-04-1991 to 29-02-1992 though he had been regularly attending to his duties. The 2nd respondent claimed Rs.7,676/- along with 10 times compensation. The petitioner herein filed its counter affidavit before the authorities denying the allegations as also its liability to pay wages. The 2nd respondent's contention that he had worked for more than 4 years was denied. The petitioner denied its liability to pay wages for 11 months from 01-04-1991 to 29-02-1992 and contended that the question of giving notice to the 2nd respondent did not arise. Before the payment of Wages authority, the 2nd respondent was examined and was subjected to cross-examination. He stated that he had worked as N.M.R. Mazdoor for 5 years and was still working under the opposite party and that he was not being paid salary for the last one year and 8 months despite his specific request. He further stated that the petitioner had asked him to go away and that he was not given any notice. In support of the fact that he was in service, the petitioner marked a letter addressed by the Forest Range Officer as Ex.A-1. During cross-examination, the 2nd respondent stated that he had worked under Forest Range Officer and that his salary was fixed at Rs.660/-. Another co-witness was examined in support of the said contention. On behalf of the petitioner herein, the Forest Range Officer, was examined as a witness. According to him, the 2nd respondent and Sri Muttaiah were labourers of contractors and not employees of the petitioner, who was the principal employer. The payment of wages authority framed the following issues:-

1. Whether the applicant was and is in the employment of the opposite party?
2. If the applicant is in the employment or the opposite party, is he N.M.R. worker or worker under petty contractor?
3. If so, is he continued in service?
4. Whether the applicant removed by the opposite party or contractor?

5. Was the applicant removed by the opposite party or contractor?

6. Was the G.O.Ms.No.338, dated 09-08-1983 followed in accordance with the I.D.Act?

7. Is it is a fit case, to impose 10 times compensation over and above the claim amount?

The authority, on appreciation of the evidence on record, came to the conclusion that the 2nd respondent was an N.M.R. worker. The authority held that G.O.Ms.338, dated 09-08-1983 was applicable and since the procedure prescribed under the Industrial Disputes Act had not been followed by the petitioner while retrenching the 2nd respondent, it must be deemed that the 2nd respondent still continued in service. The Payment of Wages Authority held that since the applicant was an N.M.R. worker and is deemed to continue in service, he would therefore be entitled for the wages claimed by him. Further, in exercise of the powers conferred under Section 15(3) of the Payment of Wages Act, the Payment of Wages authority directed that compensation of 5 times over the claim amount i.e., Rs.38,380/- be paid by the petitioner herein i.e., total amount of Rs.46,056/- within a period of 30 days from the date of receipt of the order.

Sri B.G.Ravindra Reddy, learned counsel for the petitioner, would submit that the impugned order is without jurisdiction as the Payment of Wages Authority did not have jurisdiction to examine the validity or otherwise of retrenching the services of a workman and, thereafter come to the conclusion that the workman is deemed to continue in service. Learned counsel would place reliance on ***PAYMENT OF WAGES INSPECTOR v. SURAJMAL MEHTA, DIRECTOR, THE BARNAGAR ELECTRIC SUPPLY AND INDUSTRIAL COMPANY LIMITED*** and ***VISAKAPATNAM PORT TRUST*** v. ***AUTHORITY UNDER THE PAYMENT OF WAGES ACT, VISAKAPATNAM.***

Before examining the contentions in this regard, it is necessary to note Section 15 of the Payment of Wages Act where under jurisdiction is conferred on the Payment of Wages Authority to direct payment of wages and to award compensation.

Section 15 of Payment of Wages Act reads thus:

> "…. **Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims**:-
> (1) The State Government may by notification in the Official Gazette appoint a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State or any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a Civil Court or as a Stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages or delay in payment of wages of persons employed or paid in that area, including all matters incidental to such claims:
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> Provided that where the State Government considers it necessary so to do, it may appoint more than one authority for any specified area and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Act.
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> (2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorized in writing to act on his behalf or any Inspector under this Act, or any other person acting with the permission of the authority appointed under sub-section (1), may apply to such authority for a direction under sub-section (3):
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> Provided that every such application shall be presented within [twelve months] from the date on which the deduction from the wages was made or from date on which the payment of the wages was due to be made as the case may be;
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> Provided further that any application may be admitted after the said period of twelve months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

……

(3) When any application under sub-section (2) is entertained the authority shall hear the applicant and the employer or other person responsible for the payment of wages under Section 3, or give them an opportunity of being heard and, after such further inquiry (if any) as may be necessary may without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person, of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten time, the amount deducted in the former case and not exceeding twenty-five rupees in the latter, and even if the amount deducted or the delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit not exceeding twenty-five rupees:]

Provided that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to-

(a) bona fide error or bonafide dispute as to the amount payable to the employed person; or

(b) the occurrence of any emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, through exercising reasonable diligence to make prompt payment; or

(c) the failure to the employed person to apply for or accept payment, or

(4) If the authority hearing an application under this section is satisfied,-

(a) that the application was either malicious or vexatious, the authority may direct that a penalty not exceeding fifty rupees be paid to the employer or other person responsible for the payment of wages by the person presenting the application, or

(b) that in any case in which compensation is directed to be paid under sub-section (3) the applicant ought not to have been compelled to seek redress under this section, the authority may direct that a penalty not exceeding fifty rupees be paid to the State Government by the employer or other person responsible for the payment of wages.

(4-A) Where there is any dispute as to the person or persons being the legal representative or representatives of the employer or of the employed person, the decision of the authority on such dispute shall be final.

(4-B) Any inquiry under this section shall be deemed to be a judicial proceeding within the meaning of Sections 193, 219 and 228 of the

Indian Penal code.

(5) Any amount directed to be paid under this section may be recovered,

(a) if the authority is a Magistrate, by the authority, as if it were a fine imposed by him as Magistrate, and

(b) If the authority is not a Magistrate, by any Magistrate to whom the authority makes application in this behalf, as if it were a fine imposed by such Magistrate…"

It is clear therefrom that the authority appointed under sub-section (1), of Section 15 has jurisdiction to entertain an application in two cases (1) deductions not authorized under Sections 7 to 13 and (2) delay in payment of wages beyond the period fixed under Section 4 of the Act. Obligations, relating to unauthorized deductions or delay in payment of wages, are matters which the Payment of Wages Authority is empowered to entertain under Section 15(2) of the Act. While the authority undoubtedly has incidental powers, such powers necessarily relate to determination of matters incidental to a claim arising from deductions or delay in payment of wages.

In ***BARNAGAR ELECTRIC SUPPLY*** (supra 1), the Supreme Court held that the jurisdiction under Section 15 is a Special jurisdiction. and that the authority was not entitled to adjudicate the question as to whether non payment of compensation under Sections 25-FF and 25-FFF of the Industrial Disputes Act had resulted in delay in payment of Wages. The Supreme Court held that since the authority would have to enter into the question arising under provisio to Section 25-FF, as to whether there was any interruption in the employment of the workmen and whether the conditions of service under the Board were any less favourable than those under the company and whether the Board, as the new employer, had become liable to pay compensation to the workmen if there was retrenchment in future, such an inquiry

would necessarily be a prolonged inquiry involving questions of fact and of law and that failure to pay compensation on such a plea could not be said to be either a deduction which is unauthorized under the Act or fall under the category of delayed wages as envisaged under Sections 4 and 5 of the Act. In ***Visakapatnam port trust*** (supra 2), this court held thus:

> "….. It is therefore clear that the foundation for the exercise of jurisdiction by the authority is a deduction from wages made in contravention of the provisions of the Act. The authority is competent to decide the question whether a particular deduction has been made contrary to the provisions of the Payment of Wages Act and all other questions incidental to such decision. But the authority is incompetent to enquire into questions whether the deduction has been made contrary to the provisions of some other statute or contrary to other established principles of Industrial and Labour law. The authority is a tribunal of limited jurisdiction and so it must stay….."

In the case on hand, non-payment of wages is said to be the result of termination of the services of the 2nd respondent contrary to Section 25-F of the Industrial Disputes Act. Whether or not termination of the services of the 2nd respondent was contrary to Section 25-F, whether or not the workman was entitled to be reinstated and deemed to be in continuous service for non compliance of Section 25-F, whether or not the petitioner was the principal employer and the 2nd respondent an employee of the contractor, are all matters which the Payment of Wages Authority could not have enquired into while determining the question regarding delay in payment of wages, these are all matters clearly beyond his jurisdiction. Since the order of the payment of wages authority, in directing the petitioner to pay a sum of Rs.46,050/- being the wages for the period 01-04-1991 to 29-02-1992, representing the claim of Rs.7676/- along with 5 times compensation, is an order without jurisdiction, it is liable to be quashed.

The writ petition is accordingly allowed and the impugned order dated 23-09-1994, is set aside. However, in the circumstances without costs.

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03-03-2006

Prv